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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,707	01/02/2002	Idan Feigenbaum	P-2692-US1	6195
24505	7590	02/14/2006	EXAMINER	
DANIEL J SWIRSKY 55 REUVEN ST. BEIT SHEMESH, 99544 ISRAEL			NEURAUTER, GEORGE C	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,707

Applicant(s)

FEIGENBAUM, IDAN

Examiner

George C. Neurauter, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-13 and 15-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claims 1, 3-13 and 15-25 are currently presented and have been examined.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9 December 2005 has been entered.

Response to Arguments

Applicant's arguments filed 9 December 2005 have been fully considered but they are not persuasive.

The Applicant argues that insufficient evidence has been cited that gives the actual publication date of the "GetRight" document. The Examiner submits evidence that shows that the "GetRight" document and software comprising the relied on subject matter was created at least before 12 October 1999 and released to the public 13 October 1999. Within the home page and the download page of the GetRight web site, both of which were publicly posted to the public via the Internet on 13 October

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1999 as evidenced by the date they were retrieved by the Wayback Machine web site, both the home page and the download page show that version 4.1 of GetRight was released and the download page specifically shows the relied on subject matter, namely "Segmented Downloading" which is a feature that was first included in version 4.1 of the GetRight invention. Also, the cited GetRight Version History document, along with the "GetRight" document which were both included with the software that embodied the relied on subject matter, also shows that the "Segmented Downloading" was added to version 4.1. The version 4.1 software that contains the "GetRight" document and the GetRight Version History document may be downloaded from <www.oldversion.com/program.php?n=getright>. This software package includes the files which embody these relied on documents which also show the creation date of the respective files, wherein the "GetRight" document embodied in the Windows Help file named 'getright.hlp' which has a last modified date and time as being 12 October 1999 at 3:22 pm and the GetRight Version History document embodied in a text document named 'history.txt' which has a last modified date as being 12 October 1999 at 4:08 pm. Therefore, the Examiner submits that the date relied upon for the "GetRight document" is 13 October 1999 which is the date the document was publicly posted and, therefore,

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considered a printed publication that was publicly available on 13 October 1999 in accordance with MPEP 2128.

Response to Amendment

The declaration filed on 9 December 2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the "GetRight" reference.

The declaration and the statement submitted in support of the declaration contain factual errors and is therefore prima facie ineffective to overcome the "GetRight" reference. The declaration states that "...the invention for which the above-identified patent application was filed on January 2, 1999..." This date is incorrect given the facts of record and cannot be relied upon to antedate the "GetRight" reference.

Further, it is not clear how the Applicant wishes to establish prior invention. 37 CFR 1.131(b) provides three ways in which an applicant can establish prior invention of the claimed subject matter. The showing of facts must be sufficient to show:

(A) actual reduction to practice of the invention prior to the effective date of the reference; or

(B) conception of the invention prior to the effective date

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of the reference coupled with due diligence from prior to the reference date to a subsequent (actual) reduction to practice; or

(C) conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application (constructive reduction to practice):

Since the Applicant has submitted conflicting evidence which may establish actual or constructive reduction to practice and/or due diligence and no evidence concerning conception of the invention, the Applicant has not submitted a proper establishment of prior invention.

A general allegation that the invention was completed prior to the date of the reference is not sufficient. *Ex parte Saunders*, 1883 C.D. 23, 23 O.G. 1224 (Comm'r Pat. 1883).

Similarly, a declaration by the inventor to the effect that his or her invention was conceived or reduced to practice prior to the reference date, without a statement of facts demonstrating the correctness of this conclusion, is insufficient to satisfy 37 CFR 1.131.

The affidavit or declaration and exhibits must clearly explain which facts or data applicant is relying on to show completion of his or her invention prior to the particular date.

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Vague and general statements in broad terms about what the exhibits describe along with a general assertion that the exhibits describe a reduction to practice "amounts essentially to mere pleading, unsupported by proof or a showing of facts" and, thus, does not satisfy the requirements of 37 CFR 1.131(b). *In re Borkowski*, 505 F.2d 713, 184 USPQ 29 (CCPA 1974).

Applicant must give a clear explanation of the exhibits pointing out exactly what facts are established and relied on by applicant. 505 F.2d at 718-19, 184 USPQ at 33. See also *In re Harry*, 333 F.2d 920, 142 USPQ 164 (CCPA 1964).

Since none of the above criteria has been met by the declaration, the declaration is ineffective and does not satisfy the requirements of 37 CFR 1.131.

It is noted that the above noted deficiencies of the declaration are not meant to be exhaustive. The Applicant has the burden of properly establishing prior invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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Claims 1, 3-13, and 15-25 are rejected under 35 U.S.C. 102(a) as being anticipated by "GetRight 4.1 Help Guide" ("GetRight").

Regarding claim 1, "GetRight" discloses a system for downloading a file from a computer, the system comprising:

a retrieval module for retrieving a plurality of portions of a file from a plurality of computers ("servers"), wherein at least a first of said portions ("segment" or "piece") is retrieved from a first one of said computers and at least a second of said portions is retrieved from a second one of said computers; an assembling module to assemble said file from said plurality of portions; ("segmented downloading"; section "Segmented Downloading", specifically "If there are several servers where a file can be downloaded, GetRight can segment the file and download different pieces from different servers...") and

a determination module for determine the presence of said file on each of said computers; (section "Mirrors Tab", specifically "GetRight can track many possible addresses (URLs) from where a file may be downloaded."; section "Segmented Downloading", specifically "If there are several servers where a file can be downloaded, GetRight can segment the file and download different pieces from different servers..." and "You

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must have at least that number of alternate addresses (mirrors for the file...")

wherein said first of said portions and said second of said portions are substantially simulataneously downloaded to said computer. ("segmented downloading"; section "Segmented Downloading", specifically "If there are several servers where a file can be downloaded, GetRight can segment the file and download different pieces from different servers at the same time")

Regarding claim 3, "GetRight" discloses a system according to claim 2 wherein said determination module is operative to:

determine the presence of said file on a primary computer ("fastest" server) and determine whether said file on each of said plurality of computers is a duplicate ("mirror" or "alternate") of said file on said primary computer. (section "Mirror Tab", specifically "GetRight will find the fastest of the different addresses to improve your download speeds. Also, if one server is busy, or if GetRight is unable to reconnect to a server, it automatically switches to use a different alternate URL for the file.")

Regarding claim 4, "GetRight" discloses a system according to claim 2 wherein said determination module is operative to determine that said files on each of said computers have at

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least one file characteristic in common. (section "Mirror Tab", specifically "GetRight does check that the files for alternates are exactly the same size as the original file...")

Regarding claim 5, "GetRight" discloses a system according to claim 1 and further comprising:

a receiver module for receiving a list of the addresses of said computers from a query-capable computer. (section "Mirror Tab", specifically "GetRight can automatically use one of the sites which allows searching for many addresses where a file may be found.")

Regarding claim 6, "GetRight" discloses a system according to claim 1 wherein the determination module is operative to determine:

the performance of said computers and to rank said computers from best performing to worst performing, and wherein the retrieval module is operative to retrieve from a selected plurality of said computers selected portions in order of their ranking from best performing to worst performing. (section "Mirror Tab", specifically "Find fastest server: This option allows GetRight to calculate the fastest server for downloading in the list of alternates. Once it has found the fastest server in the list of alternates, it will switch to downloading from that server...GetRight will periodically recalculate the speeds

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to all the servers. If the current server is no longer the fastest server, GetRight will switch to the current fastest server.")

Regarding claim 7, "GetRight" discloses a system according to claim 6 wherein the determination module is operative to determine the response time of said computers. (section "Mirror Tab", specifically "Find fastest server: This option allows GetRight to calculate the fastest server for downloading in the list of alternates. Once it has found the fastest server in the list of alternates, it will switch to downloading from that server)

Regarding claim 8, "GetRight" discloses a system according to claim 6 wherein the determination module is operative to determine the throughput of said computers. (section "Mirror Tab", specifically "Switch servers if getting less than XX bytes per second: This option enables GetRight to change to a different server if the server is sending data very slowly.")

Regarding claim 9, "GetRight" discloses a system according to claim 1 wherein the retrieval module is operative to:

discontinue retrieving any of said portions from any of said computers that provides its portion at a performance level that falls below a predefined performance level; and continue retrieval of said retrieval-discontinued portion from any other

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of said computers. (section "Mirror Tab", specifically "Switch servers if getting less than XX bytes per second: This option enables GetRight to change to a different server if the server is sending data very slowly. If the average for several minutes is less than the number of bytes per second entered, then GetRight will switch to an alternate URL.")

Regarding claim 10, "GetRight" discloses a system according to claim 1 wherein the retrieval module is operative to:

discontinue retrieving any of said portions from any of said computers that provides its portion at a performance level that falls below a predefined performance level; and continue retrieval of said retrieval-discontinued portion from a computer other than any of said computers. (section "Mirror Tab", specifically "GetRight can automatically use one of the sites which allows searching for many addresses where a file may be found." and "Switch servers if getting less than XX bytes per second: This option enables GetRight to change to a different server if the server is sending data very slowly. If the average for several minutes is less than the number of bytes per second entered, then GetRight will switch to an alternate URL.")

Regarding claim 11, "GetRight" discloses a system according to claim 1 wherein the retrieval module is operative to retrieve using File Transfer Protocol (FTP). (section "Key Features",

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specifically "Easily resume downloads that have been disconnected--from both HTTP and FTP addresses.")

Regarding claim 12, "GetRight" discloses a system according to claim 1 wherein the retrieval module is operative to retrieve using Hypertext Transfer Protocol (HTTP). (section "Key Features", specifically "Easily resume downloads that have been disconnected--from both HTTP and FTP addresses.")

Claims 13 and 15-24 are rejected since claims 13 and 15-24 recite a method that contains substantially the same limitations as recited in claims 1 and 3-12 respectively.

Claim 25 is rejected since claim 25 recites a computer program embodied on a computer-readable medium that contains substantially the same limitations as recited in claim 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George C. Neurauter, Jr. whose telephone number is (571) 272-3918. The examiner can normally be reached on Monday through Friday from 9AM to 5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on (571) 272-3923. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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